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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROPOSED AMENDMENTS TO

BAAQMD

REGULATION 3, FEES

STAFF REPORT

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EXECUTIVE SUMMARY

The Bay Area Air Quality Management District is continuing the process of realigning permit fees and other District fees on an annual basis as recommended in the Cost Recovery Study prepared by KPMG for the District in 1999. In accordance with the recommendations of this study, staff is recommending that all District fees be increased by 1.6 percent, which corresponds to the increase in the Consumer Price Index (CPI) for the California Bay Area (San Francisco, Oakland and San Jose). Since the proposed fee adjustment is so modest this year, permit revenues are expected to be relatively unchanged for FY 03-04, but could actually decline considering the sluggish economy of the Bay Area.

The recommended increases in District fees for FY 03-04 are listed below.

1. Permit Fee Revisions

- A 1.6% Consumer Price Index adjustment in a) the filing fee for New and Modified Sources (Reg. 3-302), b) the banking filing and withdrawal fees (Reg. 3-311), and (c) the fees for alternate compliance plans (Reg. 3-312).
- A 1.6% Consumer Price Index adjustment on Fee Schedules B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, M, N, and P.

2. Asbestos Operations and Excavation of Contaminated Soil

- A 1.6% Consumer Price Index adjustment for Schedule L, Asbestos Operations and Schedule Q, Excavation of Contaminated Soil and Removal of Underground Storage Tanks. Also, minor word changes to Sections 3-105 and 3-322 and Schedule Q substituting Excavation for Aeration to clarify the intent of the rule.

3. Hearing Board Fees

- A 1.6% Consumer Price Index adjustment in the all Hearing Board Fees of Schedule A including the excess emission fees. Also, the \$275 fee for each application for intervention by a third party has been eliminated.

4. Summary of Proposed Changes

At most the proposed changes are expected to increase the District's revenues from permit renewals by an estimated \$250,000 for FY 03-04. However, as stated above, revenues from all permitting activities including: Permit renewals, New and Modified permitting, Title V permitting, and AB2588 fees are expected to be approximately the same as during FY 02-03. The primary reasons for flat permit revenue projection are: the state of the economy and the projection of fewer major permit applications for refinery modifications and large new power plants.

Specifically, the following general fees and fee schedules of Regulation 3 will be revised.

- Regulation 3, Standards: Sections 302, 307, 309, 311, 312 and 315
- Schedule A, Hearing Board (Including Excess Emissions Fees.)
- Schedule B, Combustion of Fuel
- Schedule C, Stationary Containers for the Storage of Organic Liquids
- Schedule D, Gasoline Transfer at Gasoline Dispensing Facilities, Bulk Plants and Terminals
- Schedule E, Solvent Evaporating Sources
- Schedule F, Miscellaneous Sources (including Schedules G-1, G-2 and G-3)
- Schedule H, Semiconductor and Related Operations
- Schedule I, Dry Cleaners
- Schedule K, Solid Waste Disposal Sites
- Schedule L, Asbestos Operations
- Schedule M, Major Stationary Source Fees
- Schedule P, Major Facility Review Fees
- Schedule Q, ~~Aeration~~ Excavation of Contaminated Soil and Removal of Underground Storage Tanks

EFFECTIVE DATE

The proposed effective date of the amendments above is July 1, 2003.

BACKGROUND

GENERAL FEE INCREASE

For the fifth year the District is relying on recommendations of the 1999 KPMG Cost Recovery Study in order to align District fee revenues more closely with the costs of the related programs. In the past the District often skipped adjusting the fee schedules to account for inflation. This practice, in part, caused District fee revenues to fall well below the actual program costs and also contributed to the depletion of the District's reserve accounts. In keeping with the recommendations of the KPMG Cost Recovery Study the District is proposing this 1.6 percent CPI adjustment of all District fees. The fee increase proposal for FY 03-04 should continue the process of bringing fees into alignment with related permit services costs. Table 1 below shows the history of permit fee increases starting in FY 1991-1992.

Table 1. Fee Increase History

Fiscal Year	CPI Increase	Fee Increase
FY 1991-1992	4.0	10.0
FY 1992-1993	3.2	0.0
FY 1993-1994	2.6	0.0
FY 1994-1995	1.4	1.25
FY 1995-1996	2.1	0.0
FY 1996-1997	2.2	0.0
FY 1997-1998	3.1	0.0
FY 1998-1999	2.7	3.1
FY 1999-2000	3.0	15.0*
FY 2000-2001	4.3	4.3
FY 2001-2002	4.4	4.4
FY 2002-2003	5.3	5.3
FY 2003-2004	1.6	1.6**

*Includes a 3% CPI increase plus a 12% general fee increase.

**Proposed

The District's permit program activities that are eligible for revenue sources are estimated at \$21.8 million for FY 03-04. The District's projected permit fee revenue for the coming year is \$18.4 million. In addition, program activities related to the asbestos renovation/demolition program, soil excavation project evaluations and the Hearing Board activities that are eligible for revenue sources are estimated at \$1.4 million while revenue from these source are estimated at \$1.3 million.

Program Activities Eligible For Revenue Source

Permit Division Programs

- Operating Permit Fees \$12,206,000
- New & Modified Permits \$ 5,248,000
- Title V Permit Fees \$ 2,446,000
- AB 2588 Income \$ 483,000

Other Programs

- Asbestos Fees \$ 1,188,000
- Soil Excavation Fees \$ 23,000
- Hearing Board Fees \$ 172,000
- Total \$21,767,000

Projected Fee Revenue for FY03/03**Permit Fees**

- Operating/New
& Modified Permit Fees \$15,296,000
- Title V Permit Fees \$ 1,040,000
- AB 2588 Income \$ 750,000

Other Fees

- Asbestos Fees \$ 1,270,000
- Soil Excavation Fees \$ 6,000
- Hearing Board Fees \$ 35,000
- Total \$18,397,000

An accurate projection of permit and other revenues is very difficult because many factors including, the local economy, and normal fluctuations in major plant activities are impossible to accurately predict. Furthermore it should be noted that this analysis of projected cost of permit program activities only includes direct cost. Indirect costs of all District programs are estimated at approximately 40 percent of direct costs, and are not recovered.

FUTURE RECOMMENDATIONS

In order to keep District permit fee revenues from falling below the cost of carrying out the District's permit related programs, in keeping with the recommendations of the KPMG "Cost Recovery Study", the District will continue to implement the following long-term measures:

- Permit fees will be reviewed annually and adjusted every year, as necessary to account for inflation.
- The District will continue to accurately track all employee time charges against specific programs and to use this data in the future to align District fee schedule, as closely as possible, so that fee revenues will cover the cost of related program activities.

STATUTORY AUTHORITY FOR PROPOSED PERMIT FEE INCREASES

Health & Safety Code Section 42311(a) authorizes the assessment of permit fees by the District. These fees may not exceed the actual cost of permit programs in the preceding year with an adjustment for the increase in the Consumer Price Index (CPI) for the California Bay Area (San Francisco, Oakland and San Jose).

In addition, Health & Safety Code Section 41512.7 establishes a statutory cap on the allowable annual percentage increase in permit fees and therefore limits the statutory authority for actual cost recovery for permit-related activities set forth in Health & Safety Code Section 42311. The 15 percent cap on annual percentage increase for authority-to-construct permits or permits to operate in subdivision (b) of Section 41512.7 impacts a local air pollution control district's ability to recover its actual costs as authorized in Section 42311, subdivision (a). This statutory limitation on the recovery of the costs of

an air pollution control permit program is especially striking when an air pollution control district discovers that the difference between current permit fee revenues and the actual cost of such permit programs is greater than 15 percent. In practice, the 15 percent annual increase limitation circumscribes existing statutory authority for a local air pollution control district to recover its “actual costs for district programs for the immediately preceding fiscal year” as set forth in Health & Safety Code Section 42311.

In conclusion, Health & Safety Code § 41512.7 limits actual cost recovery pursuant to Health & Safety Code § 42311. The staff proposal for permit fee revenues of \$16.7 million for FY 03-04 complies with the limits in Health & Safety Code § 42311, and the proposed CPI adjustment of 1.6 percent complies with the 15 percent limit in Health & Safety Code Section 41512.7.

OVERVIEW OF RULE CHANGES

The complete text of the proposed changes to District Regulation 3, Fees, is included in Appendix A of this document in strikeout (old) and underline (new) format. The proposed amendments to the regulation and each fee schedule are summarized below:

REGULATION 3—STANDARDS

- **Section 3-302 Fees for New and Modified Source:** Increase the filing fee for permit applications from \$250 per source to \$254 per source. Increase the minimum initial fee for an Authority to Construct from \$176 to \$179 (see various fee schedules). Increase the minimum Permit to Operate fee from \$126 to \$128 (see various fee schedules).
- **Section 3-307 Transfers:** Increase the fees for transfer of permits by \$1 from \$50 per permit to \$51 per permit and increase the maximum fee per facility from \$1000 to \$1016. An applicant who qualifies as a small business shall pay one half of these fees...\$25.50 per permit up to a maximum fee per facility of \$508.
- **Section 3-309 Duplicate Permit:** An applicant for a duplicate permit to operate shall pay a fee of ~~\$50.00~~ \$1.00 per permit.
- **Section 3-311 Banking:** Any applicant who wishes to bank emissions for future use, or convert an ERC into an IERC, shall pay a filing fee of ~~\$250~~\$254 per source plus the initial fee given in Schedules B, C, D, E, F, H, I or K. Where more than one of these schedules is applicable to a source, the fee paid shall be the highest of the applicable schedules. Any applicant for the withdrawal of banked emissions shall pay a fee of ~~\$250~~\$254.
- **Section 3-312 Emission Caps And Alternate Compliance Plans:** Increase fees for emission caps and alternate compliance plans from \$632 per source to \$642 per source, and raise the maximum fee from \$6320 to \$6420.

REGULATION 3—FEE SCHEDULES

- A 1.6% Consumer Price Index adjustment on all Fee Schedules A, B, C, D, E, F, G-1, G-2, G-3, G-4, H, I, K, L, M, P and Q.

- Schedule N: Increase the variable F_T (total amount of fees to be collected) by 1.6 percent due to the Consumer Price Index increase. This change does not require any modifications to the language of Schedule N.

RULE DEVELOPMENT PROCESS

The proposed revisions to Regulation 3, Fees were discussed at a Public Workshop held at the District's office on March 21, 2003. Almost 7000 notices were sent out announcing this workshop. The notices were sent to all current permit holders, all asbestos contractors and all persons on the District's Interested Parties list. Only one person, representing the Environmental Law and Justice Clinic (ELJC), attended the workshop.

ASSOCIATED IMPACTS

EMISSIONS IMPACTS

There will be no direct emission increases or decreases as a result of these proposed amendments.

ECONOMIC IMPACTS

Health & Safety Code § 42311, subdivision (a) provides that an air pollution control district may recover, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources. In addition, a district may adopt, by regulation, a schedule of fees to be assessed on area-wide or indirect sources of emissions which are regulated, but for which permits are not issued -- to recover the costs of district programs related to these sources. Health & Safety Code § 42311(g).

Based on this statutory authority, the District can recover its administrative and regulatory costs for programs related to stationary, area-wide and indirect sources under its jurisdiction. Therefore, the proposed amendments to Regulation 3 - Fees, by definition, are not expected to cause or create any adverse economic impacts. The fees merely represent cost recovery for important regulatory services. Finally, the proposed amended fee regulation will enable the District to continue to provide a consistent high level of service to the affected permit holders and fee payers.

Impact on small businesses is expected to be insignificant. Most small business only operate one or two sources which generally only pay the minimum permit renewal fee. The annual permit fee for each of these sources is currently \$126; under the proposal, this fee will be raised to \$128 per source. The initial fee for a new permit will increase from \$176 to \$179.

The proposal is anticipated to maintain District revenues at or near the same level as last fiscal year.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the CEQA Guidelines, 14 CCR 15000 et seq., require a government agency, such as the BAAQMD, that undertakes or approves a discretionary project to prepare documentation addressing the potential impacts of that project on all environmental media. If an agency's approval action on a project is considered exempt, CEQA does not apply. The District's proposed fee increase is statutorily exempt from the requirements of the California Environmental Quality Act as stated in the CEQA Guidelines Section 15273: "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies....." *See also* Public Resources Code Section 21800(b)(8).

CALIFORNIA HEALTH AND SAFETY CODE

Section 40728.5 of the Health and Safety Code requires districts to assess the socioeconomic impacts of amendments to regulations that, "...will significantly affect air quality or emissions limitations." This regulatory proposal has direct costs associated with the increase in permit fees, however, does not fall within the scope of an amendment that significantly affects air quality or emissions limitations. This section, therefore, does not apply.

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule. This analysis is required, "Prior to adopting rules or regulations for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914...." The purpose of this section is to identify increments of technology that meet the emission reduction objectives of the proposed rule, where possible, and to calculate the cost-effectiveness of each increment. As this proposal does change regulatory standards or impose additional emission limitations, this section is not applicable.

Section 40727.2 of the Health and Safety Code imposes new requirements on the adoption, amendment, or repeal of air district regulations. It requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The district must then note any differences between these existing requirements and the requirements imposed by the proposed change. This fee proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements. Therefore, Section 40727.2 does not apply.

Pursuant to Health and Safety Code, Section 40727, regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments to Regulation are:

- Necessary to fund the District's efforts to attain federal and state air quality standards;
- Authorized by Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364 and 40 CFR Part 70.9;
- Clear, in that the amendments are written so that the meaning can be understood by

the affected parties;

- Consistent with other District rules, and not in conflict with any state or federal law;
- Not duplicative of other statutes, rules or regulation; and
- Implements and references Health and Safety Code Sections 42311, 42311.2, 41512.7, 42364 and 40 CFR Part 70.9.

The proposed amendments have met all legal noticing requirements and have been discussed with interested parties. Staff recommends adoption of the proposed amendments.